



POLICE DEPARTMENT

December 21, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Dwight Wanzer
Tax Registry No. 905261
114 Precinct
Disciplinary Case No. 2010-2547

The above-named member of the Department appeared before me on September 30, 2011, charged with the following:

1. Said Police Officer Dwight Wanzer, assigned to the 114 Precinct, while on-duty, on or about March 5, 2010, within the confines of the 114 Precinct, in Queens County, after having been scheduled to perform a tour of 0705 hours to 1540 hours, said officer was absent from said assignment at 0705 hours and did not report for duty until approximately 0930 hours, a period of 2 hours and 25 minutes without leave.

P.G. 203-03, Page 1, Paragraph 3 - COMPLIANCE WITH ORDERS

2. Said Police Officer Dwight Wanzer, assigned as indicated in Specification #1, while on-duty, on or about March 5, 2010, within the confines of the 114 Precinct, in Queens County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said officer commenced his tour late and failed to submit a Leave of Absence Report (UF-28) for lost time, as required.

P.G. 203-10, Page 1, Paragraph 5 - PROHIBITED CONDUCT-GENERAL REGULATIONS

3. Said Police Officer Dwight Wanzer, assigned as indicated in Specification #1, while on-duty, on or about March 5, 2010, within the confines of the 114 Precinct, in Queens County, did fail and neglect to maintain said officer's Activity Log (PD 112 145), to wit: said officer failed to document activity relating to responding to a radio run.

P.G. 212-08, Page 1, Paragraph 1 - ACTIVITY LOGS-COMMAND OPERATIONS

COURTESY • PROFESSIONALISM • RESPECT

4. Said Police Officer Dwight Wanzer, assigned as indicated in Specification #1, while on-duty, on or about March 5, 2010, within the confines of the 114 Precinct, in Queens County, did wrongfully make false entries in said officer's Activity Log (PD 112-145) to wit: said entry falsely stated that said officer commenced his tour at 0705 hours when in fact he reported for duty at approximately 0930 hours.

P.G. 203-05, Page 1, Paragraph 4 - PERFORMANCE ON DUTY-GENERAL
REGULATIONS

The Department was represented by Chai Park, Esq. and Beth Douglas, Esq., Department Advocate's Office, and Respondent was represented by Craig Hayes, Esq.

Respondent, through his counsel, entered a plea of guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation hearing record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent, an 18-year member of the Department, is assigned to the 114 Precinct. Respondent testified that he submitted a Leave of Absence Report (UF-28) so that he could take off on March 5, 2010. Although Respondent had been notified that he had to go to court on March 5, 2010, he did not remember the court date at the time he submitted the UF-28. He said he needed the day off because his house was going into foreclosure and he needed to resolve that issue immediately. Respondent said he did not

receive any notification about being denied the day off. However, in hindsight, he realized that he should have confirmed with roll call, whether his UF-28 was approved.

Respondent, believing that his UF-28 was approved, did not go to work on March 5, 2010. On the morning of March 5, 2010, Respondent received a phone call from his co-worker in regard to his whereabouts. Respondent called the desk officer, who informed Respondent that his UF-28 was not approved and that he needed to come in immediately. Based on this information, Respondent reported for duty two hours and 25 minutes late. Respondent said that he did not put in a UF-28 for the two hours and 25 minutes because the desk officer was rushing him to get dressed so that he could get to court. Respondent admitted that he should have taken it upon himself to submit a UF-28 before he left for court.

Respondent, after returning from court, realized that he did not have his Activity Log with him. While Respondent and his partner were going to the precinct to get Respondent's Activity Log, the radio dispatcher notified them that there was an "assault in progress" (10-34) in their sector. Respondent, instead of retrieving his Activity Log, responded immediately to the 10-34. Respondent failed to make these entries in his Activity Log at a later time because he had forgotten. Thus, Respondent failed to note his correct start time for his tour and his response to the 10-34.

According to Respondent's Activity Log on March 5, 2010, he was present for duty at 7:00 a.m. He said he wrote that time not because he was trying to be deceptive, but because it is a "force of habit," regarding the normal commencement of his tour.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on August 30, 1993. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

Respondent has pleaded Guilty to being absent from his assignment for two hours and 25 minutes, failing to submit a Leave of Absence Report (UF-28) for the lost time, failing to maintain his Activity Log with respect to a radio run and with respect to the time his tour commenced. The Assistant Department Advocate asked for a penalty of the forfeiture of 20 vacation days. The Court disagrees.

The Court finds that there were mitigating circumstances in this matter. Respondent pleaded Guilty to four Charges and Specifications, all of which occurred on March 5, 2010. The Court takes notice of the fact that on or about this date, Respondent was facing foreclosure of his home at this same time and put in for leave from work to handle this very important, yet pressure-filled matter. Respondent foresaw the need to be away from work to address his situation. The Court also takes notice of the fact that foreclosure on one's home is a very trying and stressful situation and would cause one to forget the normal vicissitudes of life, even for a police officer; such as forgetting to check to see if a day off submitted days earlier was actually approved, forgetting to carry one's Activity Log to work, or when starting work late, forgetting to make the proper entries in one's Activity Log regarding the actual start of one's tour. Foreclosure is a mitigating factor in Respondent's case.

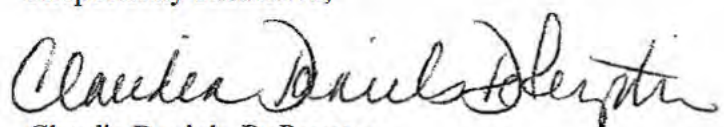
While the Court agrees with the Assistant Department Advocate that progressive discipline is warranted for repeat offenders of misconduct, in this instance, progressive discipline is not warranted where there is a mitigating factor. An additional mitigating factor in Respondent's case is that there is a ten-year span of time from Respondent's last formal discipline and these four Charges and Specifications being addressed. Respondent violated the rules at a time when he was facing foreclosure on his home. In addition, the fact that Respondent pleaded Guilty to all four Charges and Specifications pending against him is not only an acknowledgment of his guilt and it is taking responsibility for his actions, but it is also a mitigating factor in determining a penalty recommendation in this case.

The Assistant Department Advocate cited two disciplinary cases in support of her recommendation for a penalty of 20 vacation days. Both cases, Disciplinary Case Nos. 85182/09 and 83454/09, involve Respondents who had multiple instances of being late to work. Those cases can be distinguished from this Respondent who had one lateness incident, and who reported for duty as soon as he was made aware that his UF-28 that he submitted had not been approved. Also, all of this Respondent's misconduct occurred on the same date, March 5, 2010, a tense time in his personal life.

Accordingly, it is recommended that Respondent forfeit 15 vacation days to resolve the Charges and Specification pending against him in this matter.

APPROVED
JUN 26 2010

RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,

Claudia Daniels-DePeyster
Assistant Deputy Commissioner -- Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER DWIGHT WANZER
TAX REGISTRY NO. 905261
DISCIPLINARY CASE NO. 2010-2547

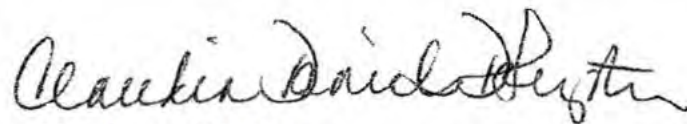
In 2008, Respondent received an overall rating of 3.5 "Above Competent" on his annual performance evaluation. In 2009 and 2010, he received a rating of 3.0 "Competent." Respondent has received three Excellent Police Duty Medals and one Meritorious Police Duty Medal in his career to date.

[REDACTED]

[REDACTED] On June 18, 1999, Respondent received one Charge and Specification for failing to safeguard a crime scene when he discharged one round from his 9mm at a large dog and failed to remain at the crime scene pending the arrival of the investigating supervisors. Respondent pleaded Guilty and accepted a penalty of the forfeiture of ten vacation days. On September 6, 2000, Respondent received Charges and Specifications for failing to fulfill performance duties on various dates. He pleaded Guilty to all Charges and Specifications and accepted a penalty of the forfeiture of ten vacation days.

In 2004, Respondent received a Negative Performance Evaluation in the areas of performance and behavioral dimensions. He was placed in Special Monitoring as a result of his evaluation and was also transferred for cause from Transit District 11 to the 114 Precinct because of his performance.

For your consideration.



Claudia Daniels-DePeyster
Assistant Deputy Commissioner [REDACTED] Trials